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**COPY MAILED**

**NOV 02 2007**

In re Application of	:	<b>OFFICE OF PETITIONS</b>
Yosi Bar-Erez	:	
Application No.: 09/581990	:	<b>DECISION ON</b>
Filing or 371(c) Date: 06/21/2000	:	<b>PETITION</b>
Attorney Docket Number: 1529	:	

This is a decision in response to the "Re-Petition," filed September 9, 2007. The petition is properly treated as a renewed petition under 37 CFR 1.181.

This Petition is hereby **granted**.

**Background**

The above-identified application became abandoned for failure to timely and properly reply to the final Office action, mailed May 5, 2004, wherein the Examiner rejected claims 26-45, 51, 52, 55 and 56. The Office action set a three (3) month period for reply, and provided for extensions of time under 37 CFR 1.136(a).

Applicant filed a Notice of Appeal in response to the Office action on September 9, 2004, and Appeal Brief on January 3, 2005. The Examiner filed an Answer on March 21, 2005. The Board of Patent Appeals and Interferences ("Board") issued an Order returning the appeal to the Examiner on July 27, 2005, and the Examiner issued a Notice of Defective Appeal Brief on August 9, 2005. Applicant filed an Appeal Brief on September 7, 2005. The Examiner filed an Answer on December 5, 2005. The Board issued a Decision on November 16, 2006, affirming all rejections on appeal. No claims having been allowed, and no response to the Board's decision having been filed, proceedings in the application are terminated as of January 17, 2007. The application is abandoned.

Applicant filed a petition on January 16, 2007, wherein Applicant asserted non-receipt of the Board Decision.

The petition was dismissed in a Decision mailed April 20, 2007. The Decision dismissing the petition informed Applicant that Applicant must, in addition to stating that the Board Decision was not received, also state that a search of the file jacket and docket records reveal that the Board Decision was not received, and provide a copy of the file jacket and docket records to this Office.

It was also noted that the correspondence address of record indicated that the Board Decision was mailed to Applicant care of Bill Polkinghorn at Discovery Dispatch. Applicant was advised that the statement of non-receipt must be from a person with firsthand knowledge of the non-receipt, in this instance, the person receiving Applicant's correspondence at Discovery Dispatch. Finally, the Decision reiterated that the showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office action may have been lost after receipt rather than a conclusion that the Office action was lost in the mail.

#### The June 19, 2007 Re-Petition

Applicant filed a request for reconsideration on June 19, 2007 and included, in relevant part, the Declaration of Bill Polkinghorn, wherein Mr. Polkinghorn stated that he packages all the mail, and hand-delivers it to a DHL courier who picks it up from Mr. Polkinghorn personally to send to Dr. Friedman in Israel, and Mr. Polkinghorn notifies Dr. Friedman of the DHL waybill number.

Applicant had not filed any evidence outside of Mr. Polkinghorn's personal Declaration as to correspondence that was received from this Office, i.e. a docket record or file jacket maintained by Mr. Polkinghorn.

The petition was dismissed in a Decision mailed August 3, 2007. Applicant had not provided any evidence of a system in place to record Office communications received from this Office at the correspondence address of record. The showing of non-receipt must be from the correspondence address of record.

#### The present re-petition

Applicant files the present request for reconsideration and clarifies that the issue is the timing of the issuance of the Notice of Abandonment. Applicant states that the Board's Decision was issued on November 16, 2006. Applicant asserts that proceedings in the application should not have been terminated until the expiration of the time for filing court action, or two months as provided in the MPEP 1214.06<sup>1</sup>.

Applicant asserts that the application should not have been abandoned until January 17, 2007. Applicant argues that the Notice of Abandonment, mailed November 27, 2006, 11 days after the mail date of the Board Decision, was premature, and should be withdrawn.

#### Applicable Law, Rules and MPEP

The MPEP 1214.06(I) Examiner Sustained in Whole or in Part, No Claims Stand Allowed, provides

The proceedings in an application or ex parte reexamination proceeding are terminated as of the date of the expiration of the time for filing court action. The

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<sup>1</sup> Applicant notes in the petition that a Continuation-in-Part ("CIP") application was filed January 16, 2007.

application is no longer considered as pending. It is to be stamped abandoned and sent to abandoned files. (Emphasis supplied)

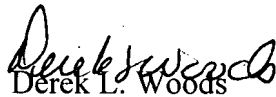
Analysis and conclusion

The Board issued a Decision on November 16, 2006, affirming all rejections on appeal. No claims having been allowed, and no response to the Board's decision having been filed, proceedings in the application are terminated as of January 17, 2007.

Applicant The Notice of Abandonment mailed November 27, 2006 was mailed pre-maturely and is hereby withdrawn.

The application is being referred to Technology Center Art unit 1734 for re-mailing of the Notice of Abandonment.

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232.



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Office of Petitions